

MARINE LOG'S TANKER & MARITIME LEGISLATION '98

CONFERENCE

KEYNOTE ADDRESS

RADM R. C. NORTH

22 SEPTEMBER 1998

INTRODUCTION

GOOD MORNING. MR. WALDRON, FELLOW SPEAKERS, LADIES
AND GENTLEMEN.

IT IS INDEED A DISTINCT PLEASURE AND HONOR TO BE YOUR
KEYNOTE SPEAKER AT THIS YEAR'S CONFERENCE,
"TANKER AND MARITIME LEGISLATION". MY THANKS TO
MARINE LOG FOR INVITING ME.

LOOKING OVER THE CONFERENCE THEME AND AGENDA, I
NOTICE THAT IT IS A COMPREHENSIVE ONE DISCUSSING
VARIOUS LEGISLATION AND REGULATIONS AND THEIR
AFFECTS ON THE TANKER INDUSTRY INCLUDING ISM
COMPLIANCE, ENVIRONMENTAL CRIMES ENFORCEMENT
AND SPILL RESPONSE REGULATIONS TO NAME A FEW.

AS YOUR KEYNOTE SPEAKER, IT'S MY FUNCTION TO LAY A FOUNDATION FOR THE SPEAKERS THAT FOLLOW AND STIMULATE THE AUDIENCE THINKING PROCESS – PERHAPS STIR THE POT A LITTLE.

I'LL TRY TO DO THAT WITH SOME THOUGHTS ABOUT OPA 90 IMPACT AND THE CLEAN WATER ACT, A LOOK AT SOME CURRENT PREVENTIONS AREAS OF EMPHASIS AND CLOSE WITH MY PERCEPTIONS, AS A REGULATOR, OF THE TANKER INDUSTRY. IN THE PROCESS, I'LL POSE A FEW QUESTIONS FOR YOUR CONTEMPLATION.

OPA 90

IT IS AN UNDERSTATEMENT TO SAY THAT THE GROUNDING OF THE EXXON VALDEZ IN 1989 GREATLY HEIGHTENED INTEREST IN POLLUTION PREVENTION AND ENVIRONMENTAL PROTECTION.

THIS ACCIDENT LED TO THE PROMULGATION OF OPA 90 WHICH IS THE LARGEST MARINE SAFETY TASK THE COAST GUARD HAS EVER UNDERTAKEN AND, AS YOU KNOW, RESULTED IN SWEEPING CHANGES IN OIL AND CHEMICAL TRANSPORTATION, PARTICULARLY IN THE AREAS OF OIL SPILL PREVENTION, MITIGATION, CLEANUP AND LIABILITY.

OPA 90 BUILDS ON CONCEPTS FROM THE CLEAN WATER ACT
SUCH AS SECTION 301, WHICH DATES TO THE FWPCA OF
1972 WHICH STATES:

“CONGRESS HEREBY DECLARES THAT IT IS THE POLICY OF
THE UNITED STATES THAT THERE SHALL BE NO
DISCHARGE OF OIL OR HAZARDOUS SUBSTANCES INTO
THE NAVIGABLE WATERS OF THE U.S., UPON ADJOINING
SHORELINES, OR INTO OR UPON THE WATERS OF THE
CONTIGUOUS ZONE...”

THAT “NO DISCHARGE” STANDARD IS WHAT MORE THAN 25
YEARS OF OIL SPILL PREVENTION REGULATION HAS BEEN
BASED UPON AND TO WHICH THE DOUBLE HULL CONCEPT,
WITH IT’S HIGH PROBABILITY OF ZERO DISCHARGE
COMPARED TO OTHER KNOWN ALTERNATIVES, IS MOST
RESPONSIVE – AND WE’RE OPEN TO ALTERNATIVES. IT’S
THE BASIS FOR THE VESSEL, FACILITY AND TRANSFER
POLLUTION PREVENTION REGULATIONS OF THE MID 1970’S
THAT DID MUCH TO RID U.S. WATERS OF ROUTINE
OPERATIONS OIL POLLUTION.

SOME SAY THAT BY OUR ADHERENCE TO DOUBLE HULLS SAY
WE'RE SACRIFICING PREVENTION OF SMALL SPILLS FOR A
HIGHER RISK OF A LARGER DISCHARGE WHICH
ALTERNATIVE DESIGNS MAY MORE LIKELY PREVENT.
THEY SAY WE SHOULD SUFFER THE SMALL SPILLS. ARE
THEY SAYING WE SHOULD ABANDON OUR NO DISCHARGE
STANDARD? IF SO, WHAT LEVEL OF DISCHARGE IS OK?
HOW MUCH SHOULD WE REGRESS? WE'RE TALKING
ABOUT A SIGNIFICANT PHILOSOPHICAL CHANGE.

DOUBLE HULLS PROTECT AGAINST THE KIND OF MINOR SPILLS
CREATED BY LOW ENERGY GROUNDINGS AND
COLLISIONS/ALLISIONS THAT ARE OUR EXPERIENCE HERE
IN THE U.S. – MANY OF THOSE IN THE PAST HAVE CAUSED
MORE THAN MINOR SPILLS, AND IN HIGH ENERGY
INCIDENTS THE HULL CONFIGURATION MAY BE
IRRELEVANT – DOUBLE HULL, MID-DECK, COULOMBI EGG
OR WHATEVER – THEY'LL ALL SPILL OIL.

BACK TO OPA 90. WHAT HAVE WE LEARNED BY ITS IMPLEMENTATION? GENERALLY SPEAKING, PREVENTION-BASED REGULATIONS THAT ADDRESS THE CAUSES, CONDITIONS, SITUATIONS, OR INCIDENTS THAT PRECEDE OIL SPILLS TEND TO BE MORE EFFECTIVE IN PROTECTING THE ENVIRONMENT THAN RESPONSE-BASED REGULATIONS. SIMPLY BECAUSE ONCE OIL IS SPILT THE ENVIRONMENT WILL BE AFFECTED NO MATTER HOW WELL THE RESPONSE IS ORCHESTRATED. RESPONSE REQUIREMENTS, THOUGH, WILL MITIGATE ENVIRONMENTAL DAMAGE.

SIMPLY PUT: OVERALL, PREVENTION IS STILL THE BEST RESPONSE.

IF YOU CONSIDER THE DATA ON OIL SPILLS IN U.S. WATERS, IT SHOWS THAT SINCE OPA 90:

- THE AVERAGE NUMBER OF OIL SPILLS OVER 10,000 GALLONS HAS DROPPED BY ALMOST 50 PERCENT FROM PRE-1991 LEVELS

- THE GALLONS SPILLED PER MILLION GALLONS OF OIL SHIPPED HAS BEEN DRAMATICALLY REDUCED FROM AN ANNUAL AVERAGE OF 14 GALLONS SPILLED FOR THE YEARS 1984 TO 1990 TO 5 GALLONS SPILLED DURING THE YEARS 1991 TO 1997, A 65 PERCENT DECREASE.
- AND FINALLY, THERE HAVE BEEN NO SPILLS OVER ONE MILLION GALLONS SINCE 1990. THE VOLUME OF TANK SHIP OIL SPILLS IN THE U.S. PEAKED IN 1989 AND HAS REMAINED BELOW 200,000 GALLONS SINCE 1991.

WHY THE REDUCTION IN ACCIDENTAL SPILLS? MANY FACTORS HAVE COME TOGETHER TO MAKE MARINE OPERATIONS—TANKER OR OTHERWISE—SAFER; SPURRED CERTAINLY BY A HIGHER SENSE OF RESPONSIBILITY BY VESSEL OPERATORS BUT ALSO BY:

- IMPROVED NATIONAL STANDARDS;
- EQUIPMENT RULEMAKING UNDER OPA 90;
- THE PROSPECT OF UNLIMITED LIABILITY UNDER SOME CIRCUMSTANCES;
- HIGH PUBLIC CONCERN AND SCRUTINY;

- THE MEDIA—THE DESIRE OF OWNERS NOT TO BE A LEAD STORY ON THE EVENING NEWS;
- NATURAL RESOURCE DAMAGE ASSESSMENT AND LIABILITY;
- INCREASED CRIMINAL LIABILITY AND ENFORCEMENT ACTIONS – ALTHOUGH IT ALSO PROVIDED FOR A WIDER RANGE OF CIVIL PENALTY PROCEDURES AND CHANGED THE CWA REQUIREMENT THAT A PENALTY MUST BE ASSESSED TO THAT PENALTY MAY NOW BE ASSESSED FOR A SPILL.

IN REGARD TO THE LAST ITEM – CRIMINAL LIABILITY – THE COAST GUARD PUBLISHED A COMMANDANT INSTRUCTION IN JULY OF 1997 ENTITLED CRIMINAL ENFORCEMENT OF ENVIRONMENTAL LAWS THAT HAS LEAD TO CONCERNS EXPRESSED BY THE INDUSTRY THAT THE COAST GUARD WAS ENCOURAGING A WIDER USE OF CRIMINAL SANCTIONS.

THAT'S NOT THE CASE. IN FACT, IN THE INSTRUCTION IT STATES THAT WE EXPECT THE VAST MAJORITY OF SPILLS WILL STILL RESULT IN A CIVIL PENALTY.

WE'VE CONDUCTED A SURVEY OF ITS FIELD OFFICES TO SEE IF, SINCE THE PUBLICATION OF THE INSTRUCTION, THERE HAS BEEN AN APPRECIABLE INCREASE IN THE NUMBER OF VIOLATIONS REFERRED FOR CRIMINAL PROSECUTION.

BETWEEN JULY 30, 1997, WHEN THE INSTRUCTION WAS PUBLISHED, AND MARCH 30, 1998, 8,357 POLLUTION CASES HAD BEEN INVESTIGATED. 2,010 OF THESE CASES HAVE BEEN HANDLED BY ISSUANCE OF A TICKET RATHER THAN A FORMAL CIVIL PENALTY. THE REMAINDER WERE EITHER NOT PURSUED AS A VIOLATION OR WERE REFERRED TO A COAST GUARD HEARING OFFICER FOR CIVIL PENALTY ACTION. FINALLY, NONE OF THESE CASES HAD BEEN REFERRED BY THE COAST GUARD FOR CRIMINAL PROSECUTION.

OUR PURPOSE IN THE INSTRUCTION WAS TO PROVIDE GUIDELINES TO ALLOW A CONSISTENT APPROACH BY FIELD UNITS IN DETERMINING THE APPROPRIATENESS OF CRIMINAL PROSECUTION AND TO DO IT PROPERLY.

CURRENT PREVENTION EFFORTS

SO WHAT ARE OUR CURRENT PREVENTION EFFORTS TO KEEP THE POSITIVE OIL SPILL REDUCTION TREND GOING.

IMPLEMENTING OPERATIONAL MEASURES FOR EXISTING TANK VESSELS AND PHASING OUT SINGLE-HULL TANKERS, TO BE REPLACED BY DOUBLE HULLS CLEARLY HAVE A HIGH PREVENTIVE POTENTIAL.

HOWEVER, IF WE HAVE TO DEPEND ON DOUBLE HULLS TO ULTIMATELY PREVENT A SPILL, SOMETHING ELSE HAS PROBABLY GONE WRONG. DOUBLE HULLS AND THE EQUIVALENT ARE SECONDARY PREVENTION MEASURES.

FOCUSING ON THE HUMAN ELEMENT MUST BE THE PRIMARY PREVENTION MEASURE. IN FACT, THIS WAS THE TOPIC OF YOUR LAST CONFERENCE IN APRIL AT WHICH I SPOKE ON *“THE HUMAN ELEMENT IN SAFETY”*.

THANKFULLY, WE’RE PAYING MORE ATTENTION TO THE PEOPLE AND THE SYSTEMS THEY OPERATE IN. COMPLYING WITH THE PRESCRIPTIVE MATERIAL REGULATIONS ALONE JUST ISN’T ENOUGH.

ISM/STCW

THE COAST GUARD HAS BEEN HEAVILY INVOLVED ON BOTH
THE NATIONAL AND INTERNATIONAL FRONTS TO
EMPHASIZE THE HUMAN ELEMENT.

WE HAVE MARCHED STEADFASTLY FORWARD IN
IMPLEMENTING THE INTERNATIONAL SAFETY
MANAGEMENT (ISM) CODE AND THE INTERNATIONAL
CONVENTION FOR STANDARDS OF TRAINING,
CERTIFICATION AND WATCHKEEPING (STCW), 1995
AMMENDMENTS.

CAPT TOM GILMOUR, FROM MY STAFF, WILL BE SPEAKING WITH
YOU SHORTLY AND IN DETAIL ON ISM COMPLIANCE.

THE APPARENT SUCCESS, AT LEAST, IN THE INITIAL
IMPLEMENTATION OF THE ISM CODE, SHOULD RAISE AT
LEAST TWO CONCERNS FOR US – AND WHICH YOU CAN
ACTIVELY DISCUSS DURING CAPT GILMOUR’S TIME WITH
YOU:

- (1) WILL THE SMOOTH IMPLEMENTATION OF ISM LEAD TO
COMPLACENCY AND A SLACKING OFF OF
ENFORCEMENT?

(2) WHAT NEEDS TO BE DONE TO REALLY
INSTITUTIONALIZE THE SAFETY CULTURE MADE
AVAILABLE BY ISM THROUGHOUT THE WORLD
MERCHANT FLEET?

THE CHALLENGE FOR ISM AND STCW IS TO ENSURE THAT THE
HUMAN ELEMENT AND SAFETY AND QUALITY SYSTEM
PROGRAMS BECOME INSTITUTIONALIZED AS WE MOVE
INTO THE NEXT MILLENNIUM. THERE IS A LOT TO DO HERE
TO INSTITUTIONALIZE THE "SAFETY CULTURE" AS IT
HAS BEEN CALLED - BEYOND A PAPER EXERCISE... BEYOND
THE FIRST ROUND OF IMPLEMENTATION.

PTP

WHILE WE RECOGNIZE THAT IT IS OFTEN NECESSARY TO
REGULATE SPECIFIC SOLUTIONS TO TARGETED PROBLEMS,
EVEN HUMAN ELEMENT PROBLEMS, THE COAST GUARD
BELIEVES THAT A MOST IMPORTANT INITIATIVE FOR
ENHANCING SAFETY AND POLLUTION PREVENTION FOR
THE NEXT DECADE AND BEYOND WILL BE COOPERATIVE
INDUSTRY/GOVERNMENT PARTNERSHIPS THAT ADDRESS
THE HUMAN ELEMENT.

THE COAST GUARD HAS FORMAL PARTNERSHIPS WITH SEVEN INDUSTRY ASSOCIATIONS. THESE PARTNERSHIPS HAVE ALREADY YIELDED POSITIVE NON-REGULATORY POLLUTION PREVENTION ACTION, INCLUDING AN ANALYSIS OF CAUSES OF SPILLS ASSOCIATED WITH TANK BARGE CARGO TRANSFERS AND A STUDY OF THE COMMUNICATION AND BRIDGE RESOURCE MANAGEMENT ASPECTS OF TANKER ENTRY INTO COASTAL WATERS.

NEAR-MISS REPORTING

OUR PARTNERSHIP EFFORTS ARE NOT LIMITED TO FORMAL AGREEMENTS WITH INDUSTRY. WE ARE ALSO WORKING WITH OTHER U.S. GOVERNMENT AGENCIES.

THE COAST GUARD, TOGETHER WITH THE MARITIME ADMINISTRATION (MARAD), IS DEVELOPING A NATIONAL REPORTING SYSTEM WHICH WILL ENABLE US TO CAPTURE INFORMATION ON NEAR-CASUALTIES AND NEAR-MISS MARINE INCIDENTS.

THE TERMS NEAR-CASUALTY AND NEAR-MISS MEAN THOSE EVENTS OR CIRCUMSTANCES THAT, IF ALLOWED TO PROGRESS WITHOUT INTERRUPTION AND WITHOUT “LAST-MINUTE” INTERVENTION OR JUST PLAIN LUCK, WOULD HAVE RESULTED IN AN ACCIDENT OR A MISHAP.

THE VALUE OF THESE NEAR-CASUALTIES IS THAT THERE ARE EXPONENTIALLY MORE OF THESE THAN THERE ARE CASUALTIES. THE SHEER VOLUME OF KNOWLEDGE RECOVERABLE FROM A SYSTEMATIC ANALYSIS OF THESE EVENTS PROMISES TO POINT THE WAY TO THOSE KEY INTERVENTIONS THAT SHOULD PREVENT CASUALTIES. THIS PROJECT WILL IDENTIFY THE BEST APPROACH TO ANALYZING THESE INCIDENTS, CAPTURING THE RIGHT INFORMATION, AND DISSEMINATING IT TO THE RIGHT PEOPLE.

PAWSS/AIS

ANOTHER AREA OF CRITICAL IMPORTANCE TO POLLUTION PREVENTION IS IMPROVING AND PREPARING OUR PORTS AND WATERWAYS INFRASTRUCTURE FOR THE CHALLENGES OF THE 21ST CENTURY, INCLUDING A PROJECTED TRIPLING OF WORLD MARITIME TRADE BY 2020.

TO MEET THIS CHALLENGE THE COAST GUARD, OTHER GOVERNMENT AGENCIES, AND INDUSTRY STAKEHOLDERS WILL BE MEETING TOGETHER IN NOVEMBER AT A CONFERENCE ON THE U.S. MARINE TRANSPORTATION SYSTEM, CHAIRED BY SECRETARY SLATER.

THE CONFERENCE WILL BE BASED UPON INFORMATION FROM SEVEN REGIONAL LISTENING SESSIONS – MANY OF YOU TOOK PART IN THOSE. WE’LL BE CREATING A GOVERNMENT/STAKEHOLDER VISION AND FRAMEWORK TO MOVE TOWARD PORTS, WATERWAYS AND INTERMODAL CONNECTIONS IN THE 21ST CENTURY THAT ARE SAFE, SECURE, ENVIRONMENTALLY SOUND, EFFICIENT AND ACCESSIBLE TO A WIDE RANGE OF USERS.

A PROCESS TO BE EXECUTED AT THE LOCAL PORT LEVEL – NOT INSIDE THE BELTWAY.

AS A SEPARATE BY RELATED EFFORT, THE COAST GUARD WILL BE CONDUCTING WATERWAYS ASSESSMENTS AT THE PORT LEVEL WITH LOCAL GOVERNMENT AND INDUSTRY STAKEHOLDERS IN CONJUNCTION WITH OUR PORTS AND WATERSWAYS SAFETY SYSTEM PROJECT (PAWSS). THESE ASSESSMENTS INCLUDE DEVELOPING RISK FACTORS AND HISTORICAL ACCIDENT RATES, AND EXAMINING CURRENT AND AVAILABLE NAVIGATION SAFETY ACTIVITIES THAT OFFSET THESE RISKS, SUCH AS TRADITIONAL AIDS TO NAVIGATION; TRAFFIC SEPARATION SCHEMES; EXISTING VESSEL TRAFFIC SERVICES; AND PILOTAGE REQUIREMENTS.

PORTS AND WATERWAY SAFETY SYSTEMS (PAWSS) IS A PROJECT TO PROVIDE VESSEL TRAFFIC SERVICES IN PORTS WITHOUT THAT TECHNOLOGY. BUT ONLY WHERE TRADITIONAL, LESS COSTLY TRAFFIC MANAGEMENT MEASURES DON'T PROVIDE A SUFFICIENT THRESHOLD OF SAFETY.

PERCEPTIONS OF INDUSTRY AS A REGULATOR

I WOULD LIKE TO CLOSE MY TALK WITH MY PERCEPTION, AS A REGULATOR, OF THE TANKER INDUSTRY.

MY 32 YEARS IN THE COAST GUARD HAVE BEEN SPENT MOSTLY IN THE MARITIME SAFETY AND MEP REGULATORY FUNCTIONS IN VIRTUALLY EVERY POSITION FROM MARINE INSPECTOR TO CAPTAIN OF THE PORT AND OCMI – AND NOW DIRECTOR OF THE COAST GUARD'S MARINE SAFETY AND MARINE ENVIRONMENTAL PROTECTION PROGRAMS.

I HAVE WATCHED, AND BEEN PART OF, THE COAST GUARD'S RESPONSE AND THE TANKER INDUSTRY'S RESPONSE TO ENVIRONMENTAL CONCERNS MOSTLY PUNCTUATED BY EXTRAORDINARILY SERIOUS CASUALTIES. I HAVE TAKEN A DIRECT PART, ALONG WITH MANY OF YOU, IN THE TRANSITION FROM WHAT NOW, IN HINDSIGHT, WOULD SEEM A MINIMAL PREVENTION EMPHASIS AND NO RESPONSE CAPABILITY, EITHER NATIONALLY OR INTERNATIONALLY, IN THE MID-1960'S TO TODAY'S VERY EXTENSIVE PROGRAMS IN BOTH AREAS. CLEARLY THE STANDARDS HAVE RISEN.

I'VE WITNESSED WHAT I'D CHARACTERIZE AS AN INDUSTRY RESPONSE TO EXPANDING REGULATION FROM A POSTURE 32 YEARS AGO OF, PERHAPS AT BEST, "TELL ME WHAT I HAVE TO DO, AND I'LL DO IT - MAYBE" TO TODAY'S VERY PROACTIVE INVOLVEMENT IN THE REGULATORY PROCESS AND PARTNERING – AND IN MANY CASES INDUSTRY EXCEEDING WHAT'S REQUIRED. THE BENKERT AWARDS PRESENTED TO NUMEROUS COMPANIES IN THE INDUSTRY AT THE ANNUAL API TANKER CONFERENCE LAST JUNE IS A TESTIMENT TO THAT.

INDUSTRY HAS RECOGNIZED THAT IT MUST DO BETTER – IT MUST IMPROVE ITS IMAGE. IT MUST CONTINUE TO ADDRESS THE HUMAN ELEMENT. THE SAFETY CULTURE CONTINUES TO GROW.

THE INTERNATIONAL SAFETY MANAGEMENT (ISM) CODE IS AN EXAMPLE OF CLEAR COMMITMENT ON THE PART OF INDUSTRY TO A CULTURAL CHANGE – WE ACHIEVED A 100% COMPLIANCE RATE FOR U.S. FLAG TANKERS BY THE JULY 1, 1998 DEADLINE.

THE SUCCESSFUL IMPLEMENTATION OF THE ISM CODE SHOULD NOT ONLY BENEFIT THE DAY TO DAY OPERATIONS OF THE TANKER INDUSTRY; IT WILL GO A LONG WAY TOWARD ENHANCING THE TANKER INDUSTRY’S IMAGE AS SAFE OPERATORS.

BUT MORE MUST BE DONE. ESPECIALLY SINCE THE PUBLIC DOES NOT UNDERSTAND THE VALUE OF THE MARINE TRANSPORTATION SYSTEM IN GENERAL, LET ALONE THE VALUE OF THE CONTRIBUTION OF THE TANKER SEGMENT TO THE ECONOMY AND PROTECTION OF THE ENVIRONMENT.

IN SUMMARY, WE'VE COME A LONG WAY TOGETHER IN 30 YEARS IN IMPROVING MARITIME SAFETY AND MARINE ENVIRONMENTAL PROTECTION. BUT WE STILL HAVE WORK TO DO. OUR FOCUS ON PREVENTION – STILL THE BEST RESPONSE – MUST CONTINUALLY SEEK THE BEST INVESTMENTS; THOSE THINGS WITH THE MOST RETURN FOR OUR MUTUAL INVESTMENT OF RESOURCES.

THIS CONFERENCE EMPHASIZES LEGISLATION AND REGULATION AND ITS IMPLEMENTATION – SUCCESSFULLY IMPLEMENTING WHATS ON THE AGENDA IS ESSENTIAL AND WILL KEEP US ALL WELL EMPLOYED.

BUT, WE MUST ALSO CONTINUE TO SEEK NON-REGULATORY SOLUTIONS WHERE POSSIBLE THROUH PARTNERSHIP AGREEMENTS. PARTNERING AND EMPHASIS ON THE HUMAN ELEMENT MAY WELL BE OUR BEST INVESTMENTS AS WE MOVE INTO THE NEW MILLENIUM.

TODAY AND TOMORROW WILL PROVIDE A GREAT OPPROTUNITY TO PARTNER INFORMALLY AND EXCHANGE VIEWS AS WE WORK TOGETHER ABOUT LEGISLATION AND REGULATION AND ITS IMPLEMENTATION – MAKE THE MOST OF IT.